

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8<sup>th</sup> day of August, two thousand seventeen.

Present:

Raymond J. Lohier, Jr.,  
Susan L. Carney,  
Christopher F. Droney,  
*Circuit Judges.*

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Petitioner,	:	
	:	No. 17-1482
NEW YORK CITY AND VICINITY DISTRICT	:	
COUNCIL OF CARPENTERS,	:	
	:	Board Case No.:
Intervenor,	:	29-CA-134711
v.	:	
	:	
STEIN INDUSTRIES, INC.,	:	
	:	
Respondent.	:	

CONSENT JUDGMENT

THIS CAUSE came to be heard upon an application by the National Labor Relations Board for enforcement of its Order issued on February 10, 2017, against Stein Industries, Inc., in Board Case No. 29-CA-134711, reported at 365 NLRB No. 31, and the parties having advised this Court of their desire to dispose of this matter by entry of a consent judgment enforcing the Board's Order;

IT IS HEREBY ORDERED AND ADJUDGED by the Court that the said Order of the National Labor Relations Board be, and the same is hereby, enforced; and that the Respondent, Stein Industries, Inc., its officers, agents, successors, and assigns, abide by and perform the directions of the Board as set forth in its Order. (See attached Order and Appendix).

The mandate shall issue forthwith.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

The image shows a handwritten signature in black ink that reads "Catherine O'Hagan Wolfe". The signature is written over a circular official seal. The seal is divided into two horizontal halves: the top half is red and the bottom half is blue. The words "UNITED STATES" are written in a curve along the top edge of the seal. The words "SECOND CIRCUIT" are written in the center of the seal. The words "COURT OF APPEALS" are written in a curve along the bottom edge of the seal. There are small stars on either side of the central text.

NATIONAL LABOR RELATIONS BOARD

v.

STEIN INDUSTRIES, INC.

**ORDER**

Stein Industries, Inc., Amityville, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Failing and refusing to bargain in good faith over the terms and conditions of a successor collective-bargaining agreement with New York City and Vicinity District Council of Carpenters (the Union) as the exclusive collective-bargaining representative of the employees in the following unit:

All foremen, journeymen mechanics, carpenters, bench hands, machine men, cabinet makers, model makers, sprayers, varnishers, wood finishers, wood carvers, and turners, kalamein men, apprentices, helpers, unskilled and semi-skilled production workers, metal workers and all other employees doing production and maintenance work, except a caretaker of a building.

- (b) Making unilateral changes in its unit employees' terms and conditions of employment without first bargaining with the Union to impasse.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All foremen, journeymen mechanics, carpenters, bench hands, machine men, cabinet makers, model makers, sprayers, varnishers, wood finishers, wood carvers, and turners, kalamein men, apprentices, helpers,

unskilled and semi-skilled production workers, metal workers and all other employees doing production and maintenance work, except a caretaker of a building.

- (b) On request, cancel and rescind all terms and conditions of employment which it unlawfully implemented or unlawfully eliminated on and after July 8, 2014, but nothing in this Order is to be construed as requiring the Respondent to cancel any unilateral changes that benefited the unit employees without a request from the Union.
- (c) At the Union's request, restore to unit employees the terms and conditions of employment that were applicable prior to July 8, 2014, and continue them in effect until the parties either reach an agreement or a good-faith impasse in bargaining.
- (d) Make whole the unit employees for any losses suffered by reason of the unlawful unilateral changes in terms and conditions of employment, on and after July 8, 2014, with interest, in the manner set forth in the remedy section of the decision.
- (e) Compensate affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each affected employee.
- (f) Make all contractually-required contributions to fringe benefit funds that it has failed to make since about July 8, 2014, if any, and reimburse affected employees for any expenses ensuing from its failure to make the required payments, with interest, as set forth in the remedy section of the decision.
- (g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (h) Within 14 days after service by the Region, post at its Amityville, New York facility copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 29,

after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 8, 2014.

- (i) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## **APPENDIX**

### **NOTICE TO EMPLOYEES**

**POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES  
COURT OF APPEALS ENFORCING AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to bargain in good faith over the terms and conditions of a successor collective-bargaining agreement with New York City and Vicinity District Council of Carpenters (the Union) as the exclusive collective-bargaining representative of the employees in the following unit:

All foremen, journeymen mechanics, carpenters, bench hands, machine men, cabinet makers, model makers, sprayers, varnishers, wood finishers, wood carvers, and turners, kalamein men, apprentices, helpers, unskilled and semi-skilled production workers, metal workers and all other employees doing production and maintenance work, except a caretaker of a building.

WE WILL NOT make unilateral changes in your terms and conditions of employment without first bargaining with the Union to impasse.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights described above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All foremen, journeymen mechanics, carpenters, bench hands, machine men, cabinet makers, model makers, sprayers, varnishers, wood finishers, wood carvers, and turners, kalamein men, apprentices, helpers, unskilled and semi-skilled production workers, metal workers and all other employees doing production and maintenance work, except a caretaker of a building.

WE WILL, on request, cancel and rescind all terms and conditions of employment which we unlawfully implemented or unlawfully eliminated on and after July 8, 2014, but nothing in this Order is to be construed as requiring us to cancel any unilateral changes that benefited you without a request from the Union.

WE WILL, at the Union's request, restore to unit employees the terms and conditions of employment that were applicable prior to July 8, 2014, and continue them in effect until the parties either reach an agreement or a good-faith impasse in bargaining.

WE WILL make you whole for any losses suffered by reason of the unlawful unilateral changes in terms and conditions of employment, on and after July 8, 2014, with interest.

WE WILL compensate you for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each affected employee.

WE WILL make all contractually-required contributions to fringe benefit funds that we have failed to make since about July 8, 2014, if any, and reimburse you, with interest, for any expenses ensuing from our failure to make the required payments.

STEIN INDUSTRIES, INC.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/29-CA-134711](http://www.nlr.gov/case/29-CA-134711) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

